THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE Dr. JUSTICE G.YETHIRAJULU
W.A.NO.1245 OF 2005
AND
W.A.NO.1246 OF 2005

COMMON JUDGMENT: (PER HON'BLE SRI JUSTICE B.PRAKASH RAO)

Since these two appeals arose out of common order passed in W.P.No.5373 of 2000 and W.P.No.5403 of 2000 separately filed by the petitioners, the same are taken up together for disposal.

2. Heard Sri Deepak Bhattacharya, learned standing counsel appearing on behalf of the appellant and Sri Nooty Rama Mohan Rao and Smt A.Chayadevi, learned counsel for the respondents appearing separately in each of the appeal.

3. The appellants herein, who are the Union of India and other Army Authorities concerned seek to assail the order of the learned single Judge dated 14.05.2005 allowing the writ petitions filed at the instance of the respondents herein, who *inter alia* sought the writ of certiorari assailing the impugned action on the part of the appellants in ordering the attachment from the proceedings dated 16.12.1999 and 20.01.2000 respectively and declaring third court of enquiry as illegal.

4. Few facts which are necessary for disposal of these two appeals are that both the respondents herein, who are the writ petitioners, are working in the military service and according to them, since their inception into service, they have got very good record. Further, they were posted at military farm in Secunderabad and their duty was to take care of the military farm animals. Based on a complaint made on 21.3.1999 by one E.R.Rao to Brig V.P. Singh, D.D.G,M.F., informing about the death of 17 cows due to electrocution on 05.03.1999, the said incident was hushed up saying as if the said death is in the normal course. However, the

enquiry was ordered at the instance of Brg. V.P.Singh, who directed to visit Mr A.S.Rathore on 23.03.1999 and examined certain witnesses. Therefore, a Court of enquiry was ordered initially wherein after examining 27 witnesses, it was opined that the cause of death of 17 animals was not due to electrocution, but due to various other reasons. Having not satisfied with the said enquiry, at the instance of the 5th respondent in W.P.No.5373 of 2000 second Court of enquiry was convened on the basis of a fake D.O letter dated 25.05.1999 without canceling the first Court of enquiry. The second Court of enquiry once again examined 6 witnesses and once again it was cancelled ordering a fresh enquiry. The third Court of enquiry was also conducted by Col.D.P.Singh, basing on the fake D.O letter. At this juncture, the respondents/petitioners complained as to the validity of such Courts of enquiries on the death of some animals. In the first Court of enquiry, there was specific finding that the animals are not died due to electrocution, hence, they cannot be blamed. In pursuance of the written proceedings issued, the respondents approached this Court challenging the entire action on the part of the appellants herein.

5. Those writ petitioners were contested by the appellants, inter alia, on the ground that under Army Rules, 1950, they have got powers to conduct an enquiry and therefore, there is no illegality in the impugned action. However, the learned single Judge by going in detail the entire chequered events as occurred in conducting the various enquiries, its stages and opinions formed therein, found that the same is not valid. Even otherwise on a plea was raised by the respondents in support of their claim stating that the entire action is mala fide. The learned single Judge found favour with the same and allowed the writ petitions. Hence, these appeals.

6. Sri Deepak Bhattacharya, learned counsel appearing for the appellants sought to contend that having regard to the death of 17 cows on 5.3.1999, under army circulars the authorities deputed one man enquiry by the Col.A.S.Rathor on 24.03.1999 and subsequently an order was issued for holding a court of enquiry on 04.05.1999 and due to changing of the officers, there was a second court of enquiry as ordered on 22.7.1994, which was followed by third Court of enquiry dated 22.07.1999 and therefore, it does not in any way suffer. Further it is also his case that the Court of enquiry is on the basis of preliminary enquiry conducted by Col Rathur and thus there is ample material to involve the 1st respondents herein and supported by the statements recorded in the enquiry.

7. Further it is also contended that as long as report is not accepted and became final, there is no fetter on the power of the authorities to conduct proper enquiries. It is also his contention that there can be repeated resemble of enquiry under Rule 177 of the Army Rules which is only with a view to ascertain the true and correct evidence and bring out actual in puts. Further it is also contended that there is no disciplinary enquiry initiated against the respondents herein. The finding of fact is preliminary one and therefore it is nothing to be interfered with. Even otherwise it was the contention that the entire enquiry is perfectly valid and is only a finding of fact. Therefore, the learned single Judge ought not to have interfered with.

8. The learned counsel appearing for the respondents sought to contend that the entire proceedings are totally vitiated and the same were initiated to harass the respondents with a mala fide intention. Therefore, it does not call for any interference.

9. On a consideration of the submissions made and also

perusal of the material, the point which arises for consideration is as to whether on the facts and circumstances of the case, the enquiry as sought to be conducted against the respondents herein is justified or suffer from any infirmity including the malafides?

10. There is no dispute in regard to the chequered events leading to filing of the writ petitions by the respondents herein both of whom are in the Army service. There is also no dispute about the death of 17 cows. More so, it is their case that those cows died due to electrocution and therefore, there is an allegation on the part of the respondent No.1 herein. Whereas it is the case of the respondent No.1 that the said death is due to natural and they can no way made responsible. For all these allegations, the first Court of Enquiry was convened by an order dated 04.05.1999 and in pursuance of which 27 witnesses were examined and detailed report was given on 25.5.1999 with no finding against the respondent No.1 herein. Subsequent second court of enquiry was convened on 6.7.1999 once again to go into the alleged death of animals to ascertain the cause. However, there was no cancellation of the first court of enquiry. Thus later the second court of enquiry was convened on 22.7.1999 after examining 6 witnesses. Since for want of members equivalent to the rank to that of the first respondent, third Court of enquiry was conducted by canceling the second court of enquiry. The said third court of enquiry submitted report on 03.10.1999 holding that the respondents are guilty of charges and recommended for disciplinary action against them. However, it is curious to note that various reasons are given canceling the first court of enquiry and got report therein and as to how and why the same should not be believed. The main submission which has been pressed into service on behalf of the respondents before the learned single Judge found to be very validity of the conducting of several

enquiries and also there being no reasons for such repeated action. Even in this regard, the learned single Judge who perused the record in depth found and that the same does not indicate any such valid reason.

11. On perusal of the entire material especially on reading of the learned single Judge's order wherein it is categorically found that after considering various decisions cited across the bar, that there is no bar to hold such enquiry and especially in view of the allegations and mala fides and there being no warrant as such to hold repeated enquiries, that after going through the entire records particularly courts of enquiry as well as the statements of D.S.Koli andV.P.S.Rathore, it was found that there was mala fide intention on the part of the authorities in conducting courts of enquiries and holding respondent No.1 guilty of the charges. Therefore, it was also held that the entire said proceedings are totally illegal.

12. We have also gone through the entire proceedings and on perusal of the chequered events which have glaring on the face of it, it shows that some how the appellants sought to implicate the respondents and to blame for the cause of the death of the animals. As rightly held by the learned single Judge, there is no material to implicate the respondents directly or otherwise or make them responsible for the death of the said animals. Even though such repeated events have been made by the appellants herein to implicate the respondent No.1, but nothing much has come out from the same. Moreso, in view of the categorical findings as arrived at in the first Court of enquiry, it has not been validly superseded or cancelled by the authorities, yet they sought to proceed one after the other. Having thus considered the entire record and totality of the facts and circumstances of the case, we are in entire agreement with the learned single Judge's findings in

this regard as arrived at and no other valid reason or ground is made out on the legal or on facts to warrant any interference at the instance of the appellants herein. Hence, we do not find any merits in these appeal and both the appeals are accordingly dismissed. No costs.

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B.PRAKASH RAO,J

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Dr.G.YETHIRAJULU,J

Dated: -09-2006
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